

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CASE NO.: 1:21-CR-226-PAB-1
)	
v.)	DECLARATION OF PETER R.
)	ZEIDENBERG IN SUPPORT OF
DAVIS LU,)	DEFENDANT LU'S MOTION FOR A
)	NEW TRIAL
Defendant.)	
)	
<hr style="width: 45%; margin-left: 0;"/>		

Peter R. Zeidenberg hereby declares as follows to the best of his knowledge and belief:

1. I am a partner at the law firm of ArentFox Schiff LLP, who have been attorneys of record for Defendant Davis Lu since March 24, 2025. I submit this Declaration in support of Defendant Davis Lu's Motion for a New Trial.

2. After being retained as Mr. Lu's counsel, I requested from Mr. Lu's former, trial counsel at the law firm of Friedman Nemecek Long & Grant LLC a copy of the discovery produced by the government in this case. They provided it promptly.

3. Mr. Lu's trial counsel informed us that about an hour before Agent Monica Hantz began her direct testimony on rebuttal, the Government disclosed three new exhibits to the defense via email: Exhibits 13A, 13B, and 22. Exhibit 13A purported to be screenshots of six email notifications/alerts that Mr. Lu received on August 26, 2019, August 27, 2019, and August 29, 2019, which purportedly showed that the Enovia servers crashed on those dates. Exhibit 13B purported to be a summary chart of 891 email notifications/alerts that Mr. Lu received between June 26, 2019 and September 5, 2019, which indicated that the Enovia servers had crashed. Exhibit 22 purported to be four samples from a 95,000 event-log, which purported to show the dates Mr.

Lu was active on his server.

4. It is my understanding from Mr. Lu's trial counsel that they had not seen the documents supporting Exhibits 13A and 13B in discovery prior to trial.

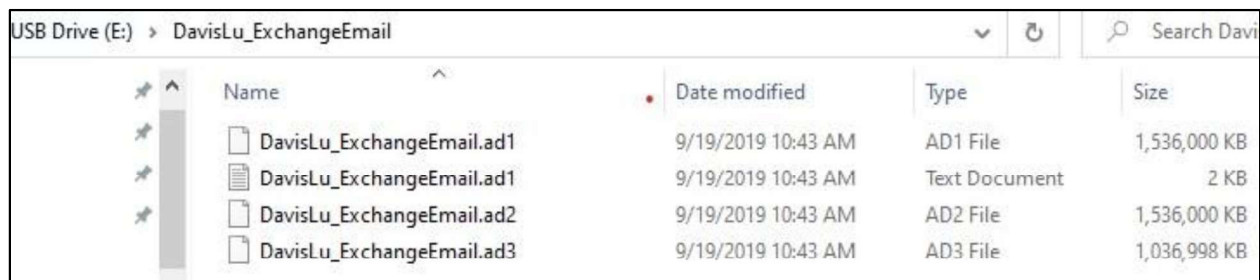
5. At my direction, Apeksha Vora, a colleague and associate at ArentFox Schiff, reviewed the discovery we received from Mr. Lu's trial counsel for documents that might support Exhibits 13A and 13B. She could not locate any such files.

6. On April 23 and 24, 2025, I emailed the Government asking for information about when Exhibits 13A and 22 were transmitted to the defense. A true and correct copy of that correspondence is attached as **Exhibit A**.

7. On April 25, 2025, AUSA Dan Riedl sent me a copy of his email transmitting Exhibits 13A, 13B, and 22 to the defense. According to his email, those three exhibits were sent to the defense on March 5, 2025 at 1:00 pm. A true and correct copy of the transmittal email is attached as **Exhibit B**.

8. On April 25, 2025, I emailed the Government asking for when the underlying information for those three exhibits was provided to the defense and in what format. *See Ex. A*.

9. On April 28, 2025, AUSA Riedl informed me that Exhibit 22 was generated from data contained in the file named "3947.156751345.txt." He also informed me that Exhibits 13A and 13B were generated from the below four files:



Name	Date modified	Type	Size
DavisLu_ExchangeEmail.ad1	9/19/2019 10:43 AM	AD1 File	1,536,000 KB
DavisLu_ExchangeEmail.ad1	9/19/2019 10:43 AM	Text Document	2 KB
DavisLu_ExchangeEmail.ad2	9/19/2019 10:43 AM	AD2 File	1,536,000 KB
DavisLu_ExchangeEmail.ad3	9/19/2019 10:43 AM	AD3 File	1,036,998 KB

See Ex. A. AUSA Riedl did not provide the dates on which the Government produced any of

these five files. *See id.*

10. At my direction, Ms. Vora searched for the five files the Government identified. She was able to locate the file named “3947.156751345.txt.” That file is a plain text file, with no formatting, and appears to represent thousands of activity log entries. Many of the log entries span multiple lines. When printed to PDF, the document is 15,502 pages long.

11. Ms. Vora was unable to locate the four files the Government identified as support for Exhibits 13A and 13B.

12. ArentFox Schiff also employs e-discovery professionals who have technical and forensic expertise. One of our e-discovery professionals searched the discovery we received for the four files supporting Exhibits 13A and 13B, and similarly could not locate the files.

13. We contacted Mr. Lu’s trial counsel and asked if they could locate the specific files identified by the Government in their discovery materials. It is my understanding that, after conducting searches, they could not locate the documents supporting Exhibits 13A and 13B.

14. We also contacted the defense team’s expert, Warner Scheyer. At my request, he conducted a search for the documents supporting Exhibits 13A and 13B in the discovery materials he received prior to trial. After a diligent search, he informed me that he also was not able to locate the documents supporting Exhibits 13A and 13B.

I declare under the penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information, and belief.

Dated: May 12, 2025
Washington, DC



Peter R. Zeidenberg

EXHIBIT A

From: Riedl, Daniel J. (USAOHN) <Daniel.Riedl@usdoj.gov>
Sent: Monday, April 28, 2025 2:27 PM
To: Zeidenberg, Peter
Cc: Deckert, Brian (USAOHN); Heath, Candina (CRM); Vora, Apeksha
Subject: RE: U.S. v. Davis Lu

This Message Is From an External Sender

This message came from outside ArentFox Schiff LLP. Please treat this email with caution.

Report Suspicious

Peter,

13, 13A and 13B were all created from Mr. Lu's emails contained in the files referenced in my last email. 13 and 13A were examples of alert emails received by Mr. Lu. 13B is a chart created by SA Hantz using the full set of emails.

Best,
Dan

Daniel J. Riedl
(o) 216-622-3669
(m) 216-338-4883

From: Zeidenberg, Peter <peter.zeidenberg@afslaw.com>
Sent: Monday, April 28, 2025 2:00 PM
To: Riedl, Daniel J. (USAOHN) <Daniel.Riedl@usdoj.gov>
Cc: Deckert, Brian (USAOHN) <Brian.Deckert@usdoj.gov>; Heath, Candina (CRM) <Candina.Heath2@usdoj.gov>; Vora, Apeksha <apeksha.vora@afslaw.com>
Subject: [EXTERNAL] RE: U.S. v. Davis Lu

Dan,
Can you also please advise on the basis for Govt Ex. 13B, the graph exhibit?

Thank you.

Peter Zeidenberg

PARTNER | **ARENTFOX SCHIFF LLP**
peter.zeidenberg@afslaw.com | **DIRECT** 202.857.6139

From: Riedl, Daniel J. (USAOHN) <Daniel.Riedl@usdoj.gov>
Sent: Monday, April 28, 2025 1:42 PM
To: Zeidenberg, Peter <peter.zeidenberg@afslaw.com>
Cc: Deckert, Brian (USAOHN) <Brian.Deckert@usdoj.gov>; Heath, Candina (CRM) <Candina.Heath2@usdoj.gov>; Vora, Apeksha <apeksha.vora@afslaw.com>
Subject: RE: U.S. v. Davis Lu

Peter,

Exhibit 22 was generated from data contained in the file named “ 3947.156751345.txt” from Serial 17 1A14 in the non-GJ portion of the FBI manifest.

Exhibit 13A was generated from emails contained in the FBI manifest as Serial 2 1A2 of the GJ portion of FBI manifest. The names of the files containing the emails are as follows:

USB Drive (E:) > DavisLu_ExchangeEmail

Name	Date modified	Type	Size
DavisLu_ExchangeEmail.ad1	9/19/2019 10:43 AM	AD1 File	1,536,000 KB
DavisLu_ExchangeEmail.ad1	9/19/2019 10:43 AM	Text Document	2 KB
DavisLu_ExchangeEmail.ad2	9/19/2019 10:43 AM	AD2 File	1,536,000 KB
DavisLu_ExchangeEmail.ad3	9/19/2019 10:43 AM	AD3 File	1,036,998 KB

There were many discovery disclosures in this case so I'm hopeful that you can find the above files by name in the materials you received from prior counsel. Note that we provided some discovery materials on a hard drive and via one or more wallet drives. Please let me know if you're not able to locate the above files.

As always, don't hesitate to contact me with any questions or concerns.

Sincerely yours,
Dan Riedl

Daniel J. Riedl
(o) 216-622-3669
(m) 216-338-4883

From: Zeidenberg, Peter <peter.zeidenberg@afslaw.com>
Sent: Friday, April 25, 2025 12:39 PM
To: Riedl, Daniel J. (USAOHN) <Daniel.Riedl@usdoj.gov>
Cc: Deckert, Brian (USAOHN) <Brian.Deckert@usdoj.gov>; Heath, Candina (CRM) <Candina.Heath2@usdoj.gov>; Vora, Apeksha <apeksha.vora@afslaw.com>
Subject: [EXTERNAL] RE: U.S. v. Davis Lu

Thanks, Dan. Yes, I have copies of these exhibits, thank you. My question relates to whether/when this information was provided to the defense. You indicate that that this information was provided in discovery – can you please disclose when/how this was provided, and in what format? Prior counsel has indicated that they cannot identify when or if this information was disclosed in discovery.

Thank you,
Peter

Peter Zeidenberg
 PARTNER | **ARENTFOX SCHIFF LLP**
peter.zeidenberg@afslaw.com | **DIRECT** 202.857.6139

From: Riedl, Daniel J. (USAOHN) <Daniel.Riedl@usdoj.gov>
Sent: Friday, April 25, 2025 9:01 AM
To: Zeidenberg, Peter <peter.zeidenberg@afslaw.com>
Cc: Deckert, Brian (USAOHN) <Brian.Deckert@usdoj.gov>; Heath, Candina (CRM) <Candina.Heath2@usdoj.gov>; Vora, Apeksha <apeksha.vora@afslaw.com>
Subject: RE: U.S. v. Davis Lu

Peter,

Attached, please find the email transmitting Government's exhibits 13A, 13B and 22 to prior defense counsel. These exhibits were created during trial to rebut specific statements Mr. Lu made during his direct testimony. The underlying data they summarize (Exhibit 13B) or were taken from (Exhibits 13A and 22) was provided in discovery. I think the underlying sources of data came out in SA Hantz' testimony, but let me know if you have specific questions about it.

Sincerely yours,
Dan Riedl

Daniel J. Riedl
(o) 216-622-3669
(m) 216-338-4883

From: Zeidenberg, Peter <peter.zeidenberg@afslaw.com>
Sent: Thursday, April 24, 2025 6:02 PM
To: Riedl, Daniel J. (USAOHN) <Daniel.Riedl@usdoj.gov>
Cc: Deckert, Brian (USAOHN) <Brian.Deckert@usdoj.gov>; Heath, Candina (CRM) <Candina.Heath2@usdoj.gov>; Vora, Apeksha <apeksha.vora@afslaw.com>
Subject: [EXTERNAL] RE: U.S. v. Davis Lu

Dan,
Re-upping the below. To date, the prior defense team has not been able to locate these exhibits. If you believe the government did provide them, can you let us know why it is you believe that?

Thanks,
Peter

Peter Zeidenberg

PARTNER | **ARENTFOX SCHIFF LLP**
peter.zeidenberg@afslaw.com | **DIRECT** 202.857.6139

From: Zeidenberg, Peter
Sent: Wednesday, April 23, 2025 11:44 AM
To: Riedl, Daniel J. (USAOHN) <Daniel.Riedl@usdoj.gov>
Cc: Deckert, Brian (USAOHN) <Brian.Deckert@usdoj.gov>; Heath, Candina (CRM) <Candina.Heath2@usdoj.gov>; Vora, Apeksha <apeksha.vora@afslaw.com>
Subject: RE: U.S. v. Davis Lu

Dan,
We have a question about discovery – can you tell us if Govt Exhibits 13A and 22, which were introduced in the government's rebuttal case, were provided to the defense in discovery? It appears there were some questions raised about this during a bench conference during the trial, and we have not been able to nail this down as yet. Is there a transmittal letter with these exhibits included?

Thank you,
Peter

Peter Zeidenberg

PARTNER | **ARENTFOX SCHIFF LLP**

peter.zeidenberg@afslaw.com | **DIRECT** 202.857.6139

From: Riedl, Daniel J. (USAOHN) <Daniel.Riedl@usdoj.gov>

Sent: Tuesday, April 8, 2025 12:40 PM

To: Zeidenberg, Peter <peter.zeidenberg@afslaw.com>

Cc: Deckert, Brian (USAOHN) <Brian.Deckert@usdoj.gov>; Heath, Candina (CRM) <Candina.Heath2@usdoj.gov>; Vora, Apeksha <apeksha.vora@afslaw.com>

Subject: RE: U.S. v. Davis Lu

Peter,

Welcome to the Davis Lu matter. The government does not object to your proposed deadlines for post-trial motions. Please don't hesitate to reach out anytime.

Best,
Dan Riedl

Daniel J. Riedl
(o) 216-622-3669
(m) 216-338-4883

From: Zeidenberg, Peter <peter.zeidenberg@afslaw.com>

Sent: Tuesday, April 8, 2025 11:45 AM

To: Riedl, Daniel J. (USAOHN) <Daniel.Riedl@usdoj.gov>

Cc: Deckert, Brian (USAOHN) <Brian.Deckert@usdoj.gov>; Heath, Candina (CRM) <Candina.Heath2@usdoj.gov>; Vora, Apeksha <apeksha.vora@afslaw.com>

Subject: [EXTERNAL] Re: U.S. v. Davis Lu

Folks,

We're planning on getting this on file later today. Please let us know if you have any objections.

thanks,
Peter

Peter Zeidenberg

PARTNER | **ARENTFOX SCHIFF LLP**

peter.zeidenberg@afslaw.com | **DIRECT** 202.857.6139

From: Zeidenberg, Peter

Sent: Monday, April 7, 2025 3:24:50 PM

To: daniel.riedl@usdoj.gov <daniel.riedl@usdoj.gov>

Cc: Brian.Deckert@usdoj.gov <Brian.Deckert@usdoj.gov>; candina.heath2@usdoj.gov <candina.heath2@usdoj.gov>; Vora, Apeksha <apeksha.vora@afslaw.com>

Subject: U.S. v. Davis Lu

Dan,
We are new counsel on behalf of Davis Lu. I would like to file the attached Motion for Scheduling Order, indicating a date of 5/12 for post-trial motions. Can you let us know if you have any objections? I was imagining that you would like two weeks for any opposition, and then propose one week for a reply, if any. Let us know what your think.

Thank you,
Peter



**ArentFox
Schiff**

Peter Zeidenberg

PARTNER | **ARENTFOX SCHIFF LLP**

peter.zeidenberg@afslaw.com | **DIRECT** 202.857.6139

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EXHIBIT B

From: Deckert, Brian (USAOHN) <Brian.Deckert@usdoj.gov>
Sent: Wednesday, March 5, 2025 1:00 PM
To: Ian Friedman; ecn@fanlegal.com
Cc: Riedl, Daniel J. (USAOHN); Heath, Candina (CRM)
Subject: Lu
Attachments: 13B_EMAIL- ENOVIA 02212025 (2).pdf; 13A_ENOVIA ALERT.pdf; 22_LOGS - DENOV3 IP.pdf

Ian,

These are the exhibits that we intend to show to Agent Hantz. I will print them out for you and bring a copy as well.

Brian S. Deckert
Assistant United States Attorney
Northern District of Ohio
801 West Superior Avenue, Suite 400
Cleveland, Ohio 44113
Telephone: (216) 622-3873
Cell: (216) 318-2658
Brian.Deckert@usdoj.gov

